

**For discussion**

**Bills Committee on  
Financial Reporting Council Bill**

**Clause-by-clause examination  
Revised wording of clause 51 - “Preservation of secrecy”**

In response to the Bills Committee’s discussion about **clause 51** (c.f. Annex A of LC Paper No. CB(1)1364/05-06(02)) at the meeting on 28 April 2006, the Administration has made further refinement to sub-clauses (3)(b)(ix) and (3)(c) in order to distinguish between the different capacities under which the Official Receiver may receive information from the Financial Reporting Council for the purposes of performing the Official Receiver’s functions within the relevant capacity. The further revised wording is at **Annex** of this paper.

**Financial Services and the Treasury Bureau  
May 2006**

**Financial Reporting Council Bill**

**Committee Stage Amendments<sup>1</sup>**

**51. Preservation of secrecy**

(1) Except in the performance of any function under this Ordinance or for carrying into effect the provisions of this Ordinance, a specified person -

(a) shall not suffer or permit any person to have access to any matter relating to the affairs of any person that comes to the specified person's knowledge in the performance of any function under this Ordinance; and

(b) shall not communicate any such matter to any person other than the person to whom such matter relates.

(2) Despite subsection (1), a specified person may -

(a) disclose information that has already been made available to the public;

(b) disclose information for the purpose of any criminal proceedings in Hong Kong or an investigation conducted with a view to bringing any such proceedings;

(c) disclose information for the purpose of seeking advice from, or giving advice by,

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<sup>1</sup> The wording of the CSA is subject to further refinement by the Law Draftsman.

counsel, or a solicitor, or other professional adviser, acting or proposing to act in a professional capacity in connection with any matter arising under this Ordinance;

(d) disclose information in connection with any judicial or other proceedings to which the specified person is a party; and

(e) disclose information in accordance with an order of a court, magistrate or tribunal, or in accordance with a law or a requirement made under a law.

(3) Despite subsection (1), the Council may -

(a) subject to subsection (4), disclose information to a specified authority for the purpose of referring a case or complaint, or providing assistance, to the authority under section 12;

(b) subject to subsection (4), disclose information to -

(i) the Chief Executive;

(ii) the Financial Secretary;

(iii) the Secretary for Justice;

(iv) the Secretary for Financial Services and the Treasury;

(v) the Commissioner of Police of Hong Kong;

- (vi) the Commissioner of the Independent Commission Against Corruption;
- (vii) the Commissioner of Inland Revenue;
- (viii) the Registrar of Companies;
- (ix) the Official Receiver in a capacity other than that of a liquidator or provisional liquidator appointed under, or holding such office by virtue of, the Companies Ordinance (Cap. 32);
- (x) the Monetary Authority;
- (xi) the Securities and Futures Commission;
- (xii) the Market Misconduct Tribunal;
- (xiii) the Insurance Authority;
- (xiv) the Mandatory Provident Fund Schemes Authority;
- (xv) the HKICPA;
- (xvi) an inspector appointed by the Financial Secretary under section 142 or 143 of the Companies Ordinance (Cap. 32) to investigate the affairs of a corporation;
- (xvii) a public officer authorized by the Secretary under subsection (12); or
- (xviii) a company recognized as an exchange company under section 19(2) of the

Securities and Futures Ordinance (Cap.  
571);

(c) subject to subsection (4), if there is or has  
been an investigation under Part 3 concerning  
a relevant irregularity, or an enquiry under  
Part 4 concerning a relevant non-compliance,  
in relation to a listed corporation, disclose  
information on the listed corporation to -

(i) the Official Receiver in the capacity  
of a liquidator or provisional  
liquidator of the listed corporation  
appointed under, or holding such office  
by virtue of, the Companies Ordinance  
(Cap. 32); or

(ii) any other person who -

(A~~i~~) is a liquidator or provisional  
liquidator of the listed  
corporation appointed under the  
Companies Ordinance (Cap. 32); or

(B~~i~~) acts in a similar capacity in  
relation to the listed  
corporation under any law of a  
place outside Hong Kong;

~~(c) disclose information to a person who -~~

~~(i) is a liquidator or provisional~~

~~liquidator appointed under the  
Companies Ordinance (Cap. 32); or~~

~~(ii) acts in a similar capacity under any law~~

~~of a place outside Hong Kong,~~

~~for the purpose of enabling or assisting the  
person to perform his functions as such  
liquidator or provisional liquidator or in  
such similar capacity;~~

- (d) disclose information with the consent of -
  - (i) the person from whom the information was obtained or received; and
  - (ii) if the information does not relate to such person, the person to whom it relates;
- (e) disclose information in summary form that is so framed as to prevent particulars relating to any person from being ascertained from it; and
- (f) disclose information for the purpose of, or in connection with, an audit under section 19.

(4) The Council shall not disclose information under subsection (3)(a) ~~or (b)~~, (b) or (c) unless the Council is of the opinion that -

- (a) the disclosure will enable or assist the recipient of the information to perform his

functions; and

- (b) it is not contrary to the interest of the investing public or to the public interest that the information should be so disclosed.

(5) Subject to subsection (6), if information is disclosed pursuant to subsection (1), (2) or (3) (other than subsection (2)(a) or (3)(e)) -

- (a) the person to whom the information is so disclosed; or
- (b) any other person obtaining or receiving the information from that person,

shall not disclose the information to any other person.

(6) Subsection (5) does not prohibit the person referred to in subsection (5)(a) or (b) from disclosing the information to any other person if -

- (a) the Council consents to the disclosure;
- (b) the information has already been made available to the public;
- (c) the disclosure is for the purpose of seeking advice from, or giving advice by, counsel, or a solicitor, or other professional adviser, acting or proposing to act in a professional capacity in connection with any matter arising under this Ordinance;
- (d) the disclosure is in connection with any

judicial or other proceedings to which the person so referred to is a party; or

- (e) the disclosure is in accordance with an order of a court, magistrate or tribunal, or in accordance with a law or a requirement made under a law.

(7) The Council may attach such conditions as it considers appropriate to -

- (a) a disclosure of information made by it pursuant to subsection (3); or
- (b) a consent granted by it pursuant to subsection (6)(a).

(8) Subsection (1) does not affect the operation of section 13(3) of The Ombudsman Ordinance (Cap. 397) or section 44(8) of the Personal Data (Privacy) Ordinance (Cap. 486).

(9) Any specified person who contravenes subsection (1) commits an offence and is liable -

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(10) A person commits an offence if -

- (a) he discloses any information in contravention of subsection (5); and



(b) at the time of the disclosure -

(i) he knew, or ought to have known, that the information was previously disclosed to him or any other person pursuant to subsection (1), (2) or (3) (other than subsection ~~subsections~~ (2)(a) or (3)(e)); and

(ii) he had no reasonable grounds to believe that subsection (5) does not apply to him by virtue of subsection (6).

(11) A person who commits an offence under subsection (10) is liable -

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(12) The Secretary may authorize any public officer as a person to whom information may be disclosed under subsection (3)(b)(xvii).

(13) In this section, "specified person" (指明人士) means

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(a) the Council; or

(b) any person who -

(i) is or has been -

- (A) a member of the Council, the Investigation Board, a Review Committee or a committee established by the Council;
  - (B) a related person of the Council;  
or
  - (C) a person employed by or assisting a related person of the Council;  
and
- (ii) performs or has performed any function under this Ordinance.